IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 396 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS

==========

1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

---

SABBIRHUSEN @ GP BABA S/O BANNUMIYA SHAIKH

Versus

STATE OF GUJARAT

---

Appearance:

1. Special Civil Application No. 396 of 2003

MS BANNA DUTTA for MR AR SHAIKH for Petitioner No. 1

MR PRADEEP D BHATE, AGP for Respondent No. 1-3

---

CORAM : MR.JUSTICE KSHITIJ R.VYAS

Date of decision: 23/05/2003

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India, the petitioner-detenu has

challenged the order of his detention dated 2.12.2002 passed by the Police Commissioner, Ahmedabad City, respondent no.2 herein, under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (in short, 'the PASA Act').

The detaining authority, after considering one Prohibition case registered against the petitioner and also after considering the statements of two witnesses, whose identity has not been disclosed claiming privilege under Section 9(2) of the PASA Act for the alleged incidents dated 9.11.2002 and 15.11.2002, has recorded a finding that the petitioner is a 'Bootlegger' within the meaning of Section 2(b) of the PASA Act, and therefore, with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, his detention is necessary and hence the order of detention has been passed.

Since this petition is required to be allowed on the ground of delay in forwarding the representation, it is not necessary for me to consider the other contentions advanced by the learned Counsel appearing for the petitioner.

Learned Counsel for the petitioner submits that the representation dated 23.12.2002 sent through the Advocate of the detenu to the detaining authority was received on 27.12.2002. The detaining authority, instead of forwarding the said representation to the State Government immediately, forwarded the same on 1.1.2003. It is, therefore, submitted that there is infringement of the right of the detenu in considering the representation guaranteed under Article 22(5) of the Constitution of India and therefore, the continued detention of the petitioner vitiates.

Respondent No.2 has filed the affidavit-in-reply. In paragraph 20 of the said reply, it has been pointed out that the representation dated 23.12.2002 was received on 27.12.2002. 28th December 2002 to 30th December 2002 were public holidays and therefore, the said representation was forwarded to the State Government on 1st January 2003 and the detenu was informed accordingly through the jail authorities and the detenu has also made necessary endorsement in this regard. Learned AGP Mr.Bhate fairly conceded that 28th and 29th December 2002 being Saturday and Sunday respectively, the representation could have been sent on 30th December 2002, which was not done.

The Division Bench of this Court in the case of Urmilaben Navnitlal Gandhi v. The Commissioner of Police, Surat City and ors., reported in 1994(2) GLH (UJ) 10, has held that the office of the detaining authority was not alive to the urgency of forwarding the representation to the State Government for its consideration on merit and the delay was held to be unreasonable, vitiating the continued detention of the detenu. In view of this, this petition is required to be allowed on the ground of delay in forwarding the representation to the State Government being unreasonable, vitiating the continued detention of the detenu.

In the result, the petition is allowed. The impugned order of detention dated 2.12.2002 passed against the detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute. Direct service is permitted.

(Kshitij R. Vyas, J.)

Sreeram.